

EXHIBIT 9

Gerald Nielsen

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION
IN ADMIRALTY

- - -

TIFFANY N. PROVENCE, as the	:
Personal Representative of the	:
Estate of Juan Antonia	:
Villalobos Hernandez,	:
	:
Plaintiff,	:
	: Case No.
vs.	: 2:21-cv-965-RMG
	:
UNITED STATES OF AMERICA,	:
CROWLEY MARITIME CORPORATION,	:
CROWLEY GOVERNMENT SERVICES,	:
INC., DETYENS SHIPYARDS, INC.,	:
and HIGHTRAK STAFFING, INC,	:
d/b/a Hitrak Staffing, Inc.,	:
	:
Defendants.	:
	:

DEPOSITION OF GERALD NIELSEN

DATE TAKEN: Monday, April 11, 2022

TIME BEGAN: 10:00 a.m.

TIME ENDED: 5:20 p.m.

LOCATION: REMOTE PARTICIPATION DEPOSITION
(All parties participated via videoconference)

REPORTED BY: Mary Posey, Court Reporter
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1 davit arms at the beginning, which actually makes it
2 easier to do a lot of the repair work. So that's why
3 I was saying from the start that this is additional
4 information that I believe supports my opinion, it
5 does not necessarily create a new one. My opinions
6 were that there were safer means and there should
7 have been a secondary means, and from what I've seen
8 so far, we've got a stopper bar that, according to
9 the documentation now provided, was intended to be
10 used to hold the davit arm in place during
11 installation with a secondary means, so if they were
12 usable -- and I'm not at this point saying that they
13 were -- I would have to look at the report again and
14 look at the pictures again -- but if they were in a
15 condition to be used, that would have been a readily
16 available means of secondary retention.

17 Q All right. So let's focus in on this
18 concept of secondary retention in the shipyard. All
19 right. And I'm talking about the davit arms
20 themselves when they're not holding up lifeboats.

21 Are you familiar with any code or federal
22 regulation that specifies when davits or their
23 equivalents are required to be restrained, use two
24 different methods?

25 A No. There is nothing specific that I am

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1 around a sharp corner bend without protection from
2 electrical currents or damage.

3 But that's -- bear with me one second,
4 please, just so I don't miss...

5 Q Sure.

6 A Yeah. If the sling's in padding it just
7 refers to sharp edges or corners.

8 So yes, the wrapping of the wire since
9 there was the electrical current as per the
10 investigation and report, it was not the sharp turn
11 that caused the failure of the wire.

12 Q Right. So if the absence of chafing gear
13 was an OSHA violation, that, however, was not the
14 mechanism of failure. Agreed?

15 A Agreed.

16 Q Okay. And if the installation of the
17 Crosby clamps in the manner in which they were
18 installed was improper, that also was not the
19 mechanism of failure. Agreed?

20 A Correct.

21 Q Okay. And using the single wire rope
22 restraint was also not an OSHA violation.

23 A It's a -- and I'm clear in the report, I do
24 not state that that was an OSHA violation but it is
25 normal, customary, standard when looking at a job,

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1 especially if you're going through a JSA, especially
2 in the last 10 years talking about drops and stored
3 energy and line of fire, not having secondary
4 retention on something that is suspended above
5 workers is bad business practice at this point in
6 time, where 20 years ago it may have been okay.

7 Q Okay. Well, you talk about the industry
8 standard and the custom and all of it. Do you have
9 any reason to disagree that Detyens has been
10 restraining gravity davit arms in this manner for
11 20-something years?

12 A That's what the testimony shows, that
13 they've been doing it that way since the 1990's.

14 Q Okay. And so that would be the custom and
15 practice in the marine industry at Detyens Shipyard,
16 correct?

17 A At Detyens Shipyard, yes.

18 Q Okay. And so I guess I just -- I can't
19 make it out. If we have an established custom and
20 practice that has worked well for over two decades
21 and it's not an OSHA violation, and it's been
22 suspending these arms on this vessel for five months,
23 and you have rigging specialists at the shipyard who
24 sign off on this procedure, how is Crowley supposed
25 to know that there's a stray electrical current